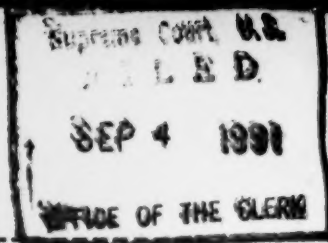


91-221

No. 91-



In The
Supreme Court of the United States

OCTOBER TERM, 1991

WALTER W. FISCHER,

Petitioner,

v.

CITY OF DOVER, NEW HAMPSHIRE,

AND

HEIRS OF SIMON JANETOS, ELIZABETH (DROUIN)
JANETOS, CHRISTINE (JANETOS) McLAIN, EVELYN
JANETOS, JOHN JANETOS, COSTAS JANETOS, PETER
S. JANETOS, DION JANETOS, NICHOLAS JANETOS,
ANGELINE (JANETOS) BANAS, EDWARD MURPHY AND
AHN MURPHY

Respondents.

Petition For Writ of Certiorari To the
Supreme Court of the State of New Hampshire

BRIEF IN OPPOSITION

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Boynton, Waldron, Doleac,
Woodman & Scott, P.A.
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BEST AVAILABLE COPY

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TABLE OF AUTHORITIES CITED**CASES**

Cook County v. Malysa, 39 Ill. 2d 376,
235 NE 2d 598 (1968)



No. 91-

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(JANETOS) BANAS, EDWARD MURPHY AND AHN
MURPHY,

Respondents.

Petition For Writ of Certiorari To The
Supreme Court Of the State of New Hampshire

BRIEF IN OPPOSITION

ORDERS BELOW

The final opinion of the Supreme
Court of the State of New Hampshire (A.1a

of Appendix to Petitioner's Petition) is not yet reported. The order of the Superior Court of New Hampshire (A.2a - A.4a of Appendix to Petitioner's Petition) is not reported.

JURISDICTIONAL STATEMENT

The judgment of the Superior Court of New Hampshire which was affirmed by the final decision of the Supreme Court of New Hampshire which was entered on May 17, 1991, has been accorded to the Petitioner and satisfied and, as a result, your Respondent respectfully submits that this Honorable Court does not have jurisdiction to review this matter.

STATEMENT OF THE CASE

Pursuant to the affirmance by the Supreme Court of New Hampshire of the New Hampshire Superior Court's Order, the Petitioner, by way of his attorney's

letter of June 25, 1991 (A-1), sought payment of the Court's judgment which was in the amount of \$7,758.77 plus interest at the rate of 10% from the date of demand pursuant to the Court's Order. Together with a letter from the Respondent, City of Dover's City Attorney Scott E. Woodman, dated July 22, 1991 (A-3), a check in the amount of \$10,000.85 was delivered directly to the Petitioner in accordance with his attorney's request in full payment of the Court's judgment. This check was accepted by the Petitioner and was cashed on July 29, 1991 (A-5, A-6). Payment of the Court's judgment was accorded to the Petitioner, accepted by the Petitioner and has now been satisfied in full.

ARGUMENT

1. **THE PETITIONER IS BARRED FROM PURSUING THE INSTANT APPEAL WHERE THE PETITIONER HAS SOUGHT AND ACCEPTED PAYMENT IN FULL OF THE JUDGMENT OF THE SUPERIOR COURT OF NEW HAMPSHIRE WHICH WAS AFFIRMED BY THE FINAL DECISION OF THE SUPREME COURT OF NEW HAMPSHIRE.**

By Order of the New Hampshire Superior Court dated August 3, 1990, judgment was entered for Petitioner in the amount of \$7,758.77 plus interest at the New Hampshire statutory rate of 10% from the date of demand by the Petitioner which was February 12, 1987. The Petitioner was not satisfied with the result and appealed said decision of the Superior Court to the State of New Hampshire Supreme Court.

The State of New Hampshire Supreme Court affirmed the Superior Court's Order by its decision dated May 17, 1991. Subsequent to this action by the State

Supreme Court, by letter of the Petitioner's attorney dated June 25, 1991, the Petitioner sought payment of the Court's judgment. On July 22, 1991, the Respondent, City of Dover, N.H., delivered to the Petitioner a check dated July 19, 1991 in the amount requested by the Petitioner's attorney. The Petitioner accepted this check and cashed it on July 29, 1991. Subsequent to accepting this check in payment of the Court's judgment, the Petitioner now seeks to have this Honorable Court review the issues which were considered by the New Hampshire Supreme Court before rendering its judgment.

It is a well-established, general rule in civil cases that when a judgment has been voluntarily paid or its benefits accepted, the questions become moot and

an appeal may not be pursued. Cook
County v. Malysa, 39Ill. 2d 376, 235 NE
2d 598 (1968).

CONCLUSION

Based upon the foregoing points of
fact and law, the Petitioner is barred
from pursuing any appeal of the decision
of the State of New Hampshire Supreme
Court dated May 17, 1991, and,
consequently, his petition for Certiorari
is unwarranted and should be denied.

Respectfully submitted,

PATTI BLANCHETTE
BOYNTON, WALDRON,
DOLEAC,
WOODMAN & SCOTT, P.A.
82 Court Street
Portsmouth, NH 03801

*Counsel for Respondent
City of Dover, N.H.*

APPENDIX

A-1

HOLLAND, DONOVAN, BECKETT, WELCH & HERMANS

PROFESSIONAL ASSOCIATION

151 WATER STREET

P.O. BOX 1090

EXETER, NEW HAMPSHIRE 03833-1090

TELEPHONE 603-772-5956

FAX # 1-603-778-1434

EVERETT P. HOLLAND

JOHN W. PERKINS

ROBERT B. DONOVAN

(1902 -1973)

WILLIAM H. M. BECKETT

THOMAS D. WELCH, JR.

STEPHEN G. HERMANS

C. JOSEPH GOULD

June 25, 1991

Scott E. Woodman, Esquire

42 Main Street

Box 70

Dover, NH 03820

Re: Fischer v. City of Dover

Dear Scott:

Please have the City of Dover pay

A-2

Mr. Fischer the amount of the judgment, \$7,758.77, plus 10% interest from the date of demand which was February 12, 1987. (See copy of Court Order dated August 3, 1990.)

I calculate the interest to be \$2,242.08 to July 1, 1991.

Accordingly, if you agree with my calculation, please have the City make a check payable to Walter W. Fischer in the total amount of \$10,000.85 and send it to him directly to 542 Central Avenue, Dover, New Hampshire 03820 and sending me a copy of the letter and check for my files. Thank you.

Very truly yours,

/S/ William H.M. Beckett

William H.M. Beckett

WHMB/rmt

F19/F3

cc: Mr. Walter W. Fischer

A-3

SCOTT E. WOODMAN 288 Central Avenue
City Attorney Dover, N.H. 03820

CITY OF DOVER, NEW HAMPSHIRE-
OFFICE OF THE CITY MANAGER
LEGAL DIVISION

July 22, 1991

Mr. Walter W. Fischer
542 Central Avenue
Dover, NH 03820

RE: Fischer v. City of Dover

Dear Mr. Fischer:

Please find enclosed a City of Dover
check in the amount of \$10,000.85 in
payment of the judgment of the Superior
Court which was recently affirmed by
order of the Supreme Court on May 17,
1991.

The amount of this check is consistent
with your attorney's calculations as set

A-4

forth in his letter to me of June 25,
1991, and your acceptance of this check
will bring this dispute to a close.

Very truly yours,

/S/ Scott E. Woodman

Scott E. Woodman

City Attorney

SEW/jcp

Enclosure

cc: David B. Wright, City Manger

Jeff Harrington, Finance Director

. William H.M. Beckett, Esquire

A-5

STRAFFORD NATIONAL BANK
DOVER, NH

THE FACE OF THIS DOCUMENT HAS A BLUE BACKGROUND

CITY OF DOVER
DOVER, NH 03820

GENERAL FUND

CHECK NUMBER 032814

00032814
400000024429

54-2
174

WALTER FISCHER
542 CENTRAL AVE.
DOVER, NH 03820

PROCESSED
JUL 30 91

AUTHORIZED SIGNATURE
John H. White
TREASURER

STRAFFORD NATIONAL BANK
ROSTER, NEW HAMPSHIRE

032814 000000024429 54-2 174

A-6

ENDORSE HERE

Deposit to Credit of

PAY TO THE ORDER OF
MERCHANTS NATIONAL BANK
DOVER, NH

Walter Fischer

DO NOT WRITE, STAMP OR SIGN ABOVE THIS LINE
RESERVED FOR FINANCIAL INSTITUTION USE

8884 1399

MERCHANTS
NATIONAL BANK
DOVER, NH 03820
011400369

29 JUL 91

FEDERAL RESERVE BOARD OF GOVERNORS REG. 10